Teamsters Local Union No. 688, affiliated with International Brotherhood of Teamsters[1] *and* Frito-Lay, Inc. Case 14–CB–9771

September 30, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On January 14, 2005, Administrative Law Judge Mark D. Rubin issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel and the Charging Party filed answering briefs to the Respondent's exceptions, and the Respondent filed a reply brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.[2]

The judge found that the Respondent violated Section 8(b)(1)(A) of the Act by threatening its members with intraunion disciplinary proceedings, initiating disciplinary proceedings, and then fining members who refused to honor a third-party picket line. The judge found that this conduct contravened the Respondent's obligations under a no-strike clause in the collective-bargaining agreement, which, in the absence of relevant extrinsic evidence, clearly and unmistakably waived the right to engage in sympathy strikes. We agree.

The relevant facts are not in dispute. The Respondent Union, Teamsters Local 688, represents sales route representatives (sales representatives) at the Charging Party's (Frito-Lay) distribution centers in the St. Louis metropolitan area. Sales representatives drive to grocery stores, sell Frito-Lay products, stock display areas, and write up new orders. The United Food and Commercial Workers (UFCW), a separate union, set up picket lines at Shop N'Save, Dierberg's, and Schnuck's[3] grocery stores in the St. Louis area on October 7, 2003.[4] Three sales representatives represented by the Respondent and members of the Respondent, James Griffin, Barbara Henry, and Ronald Johnson, regularly serviced some of the stores being picketed by UFCW. The Respondent told its members to not cross UFCW's picket lines. During the course of their duties in October, Griffin, Henry, and Johnson crossed UFCW's picket lines and performed their normal duties.

On the evening of October 8, Kevin Meyer, Frito-Lay's zone sales leader, left a voice mail message with Frito-Lay's sales representatives stating that he had been told by the Respondent's business representative, Mel Cutrell, that sales representatives could be fined if they crossed UFCW's picket lines. The next day, the Respondent's steward, Joe Philippi, told Griffin, who had admitted to Philippi the day before that he had crossed the picket line, that Griffin could be fined $200 per day for crossing the picket line. Philippi repeated this to other sales representatives at a separate distribution facility that day.

Thereafter, the Respondent charged Griffin, Henry, and Johnson with violating the Respondent's bylaws by crossing an authorized picket line. Each was summoned to a trial conducted by the Respondent, found guilty, and fined $1000.

The collective-bargaining agreement contains a broad no-strike provision:

> Article 18—Unauthorized Activity
>
> Section 4. For the duration of this Agreement, the Union will not authorize *any strikes*, *work stoppages*, or interference with the activities required of employees under this Agreement. In the event that the Employer refuses to comply with a valid arbitration award pursuant to the Grievance Procedure, this provision shall be of no force or effect for so long as the refusal continues. The only exception to this Section could be the economic action as called for in Articles 13 ["Subcontracting"] and 25 ["How Paid"].

(Emphasis added.) Article 18, thus, clearly prohibits the Respondent from authorizing "any" kind of strike or work stoppage. The article also specifically lists the exceptions to this prohibition, but neither of these exceptions is at issue here.[5]

[1] We have amended the caption to reflect the disaffiliation of the International Brotherhood of Teamsters from the AFL–CIO effective July 25, 2005.

[2] We shall modify the judge's recommended Order to correct an inadvertent grammatical error, and we shall substitute a new notice to conform its language to that set forth in the judge's recommended Order.

[3] The UFCW engaged in an economic strike of Shop N' Save, which precipitated a lockout of UFCW-represented employees at Schnuck's and Dierberg's. In response to the lockout, UFCW established picket lines at all three chains.

[4] All dates are in 2003, unless otherwise noted.

[5] The first exception, art. 13, concerns the right of the Respondent to take economic action if the two sides fail to agree over the effects of subcontracting, and the second exception, art. 25, concerns the effect, including negotiations and possible work stoppages, of changes made to the system of compensation for sales representatives. None of the parties argues that these exceptions are relevant to this case.

The collective-bargaining agreement also includes the following provisions, which allow an employee to honor a third-party picket line:

> Article 17—Picket Line
>
> It shall not be a violation of this agreement, and it shall not be cause for discharge or disciplinary action in the event an employee refuses to enter upon any property involved in a lawful primary labor dispute, or refuses to go through or work behind any lawful primary picket line, including the lawful primary picket line of any Union party to this agreement, and including lawful primary picket lines at the Employer's places of business.

The judge found that the Respondent violated Section 8(b)(1)(A) by disciplining Griffin, Henry, and Johnson for refusing to engage in a sympathy strike that was barred by the no-strike clause in article 18 of the contract. In so finding, the judge applied *Indianapolis Power Co.*, 291 NLRB 1039, 1041 (1988), enfd. 898 F.2d 524 (7th Cir. 1990), where the Board held that broad no-strike clauses are to be construed to include sympathy strikes, unless "the contract as a whole or extrinsic evidence demonstrates that the parties intended otherwise." In *Indianapolis Power*, supra, the Board found that, absent contrary evidence, the inclusion of a no-strike clause in a collective-bargaining agreement barring "any strike" would establish that the parties had "clearly and unmistakably intended to bar sympathy strikes." Id.

Applying this standard, the judge found that because article 18 contained a broad no-strike clause covering "any strikes," absent contrary evidence, the clause bars sympathy strikes. The judge next found that article 17, which allowed an employee to honor a third—party picket line without fear of discipline, did not demonstrate a contrary intent. Instead, the judge found that, when read together with article 18, article 17 allows an individual employee to make a personal decision as to whether to honor a third-party picket line. The judge reasoned that to allow the Respondent to fine members for crossing a stranger picket line would eliminate the voluntary intent of article 17 and render meaningless the clear language of article 18.[6] For this reason, the judge found that the Respondent violated Section 8(b)(1)(A) when it threatened to discipline, and disciplined, its members for refusing to honor a third-party picket line.

The Respondent excepts to the judge's finding that article 17 does not allow the Union to authorize a sympathy strike. Specifically, the Respondent argues that article 17 creates an exception to the no-strike clause in article 18. Contrary to the Respondent, we agree with the judge that the Respondent violated the Act as found.

Any waiver of an employee's right to engage in a sympathy strike must be clear and unmistakable. *Metropolitan Edison Co. v. NLRB*, 460 NLRB 693, 709 (1983); *Engelhard Corp.*, 342 NLRB No. 5, slip op. at 1 (2004). As noted above, in *Indianapolis Power*, supra, the Board held that a broad no-strike clause, absent extrinsic evidence, would be construed as a clear and unmistakable waiver of the right to engage in a sympathy strike. See, e.g., *Granite Construction Co.*, 330 NLRB 205, 223 (1999) (finding broad no-strike clause for construction unit covered sympathy strikes where there was no extrinsic evidence to the contrary). The Board also stated in *Indianapolis Power*, supra, however, that where the extrinsic evidence demonstrates that the parties intended to exclude sympathy strikes from the no-strike language, that evidence would control. *Indianapolis Power*, 291 NLRB at 1041 (finding no waiver in light of the parties' bargaining history).

First, we agree with the judge, for the reasons given in the decision, that there is no extrinsic evidence in the record demonstrating that the parties intended to allow sympathy strikes.

Second, we agree with the judge that the clear language of article 18, stating that "the Union will not authorize any strikes [or] work stoppages," reflects the intent of the parties. Accordingly, the Respondent has a contractual obligation under article 18 to refrain from authorizing *any* strikes, including sympathy strikes or work stoppages.

Third, article 17 protects individual employees from discharge or disciplinary action in the event the employee wishes to not cross a third-party picket line. It is not an exception to article 18. The universe of exceptions is clearly stated in article 18. (Arts. 13 and 25, neither of which is at issue.) It makes no mention of the conduct encompassed by article 17. Thus, since article 18 states that the "only" exceptions to the prohibition on any strikes or work stoppages are the conduct described in articles 13 and 25, there is simply no basis to import into article 18 the entirely different conduct described in article 17. That is, article 17 permits an employee to freely choose to honor a third party picket line. Article 18 forbids the Union to force the employee to honor the third-party picket line.

Article 17 gives added protection, i.e., contractual protection, to an employee's Section 7 right to honor a picket line. Although article 17 does not itself give such added contractual protection to an employee's Section 7 right to refrain from honoring a picket line, neither does

[6] The judge found that there was no extrinsic evidence demonstrating that the parties did not intend a broad no-strike ban.

it take that statutory right away. Thus, that Section 7 right remains untouched and is further aided by article 18 to the extent it forbids the Union from causing a strike or work stoppage by coercing an employee to honor the picket line.

Here, the Respondent told its members not to perform their normal duties in order to honor the UFCW picket lines established at area grocery stores, and if they did cross the picket lines, they would be fined. The Respondent did, in fact, fine three members. By this conduct, the Respondent authorized a strike or work stoppage by Frito-Lay sales representatives in sympathy with UFCW, thus, contravening its obligations under article 18 and violating Section 8(b)(1)(A) of the Act. *Carpenters Local 1780 (Reynolds Electrical)*, 296 NLRB 412 (1989) (finding violation of Sec. 8(b)(1)(A) for union's discipline of union members who refused to honor third-party picket line where collective-bargaining agreement barred sympathy strikes).

The dissent contends that the Respondent's conduct did not violate the agreement of the parties as reflected in article 18. Specifically, the dissent argues that because article 17 permits an employee to refuse to cross a third-party picket line, it is arguable that the Union's conduct does not constitute a "strike" or "work stoppage" prohibited by article 18. In other words, the dissent claims that inasmuch as the no strike clause in article 18 prohibits the Union from "interfer[ing] with the activities required of employees," and as employees are not required to cross a third-party picket line under article 17, the Union's conduct did not constitute a violation of the contract. Respectfully, our colleague's construction of the party's agreement strips each article of its plain meaning.

As noted above, article 18 explicitly prohibits the authorization of "any strikes, work stoppages, or interference with the activities required of employees" under the agreement and identifies the "only" exceptions to that prohibition. The conduct described in article 17 is not one of them. Further, article 17 does not address any "activit[y] *required* of employees." (Emphasis added.) It addresses that which is permitted, that is, protected from discharge or discipline, namely, an employee exercising his or her statutory right to not cross a third-party picket line. Article 17 does not sanction what article 18 plainly prohibits, a union calling for employees to engage in a strike or work stoppage.

As mentioned, the dissent's contrary reading renders meaningless these explicit contractual provisions. By construing article 17 as privileging the Respondent to authorize a sympathy strike, the dissent reads out of the contract both the explicit language prohibiting the authorization of "any strike or work stoppages," as well as the explicit language of limitation of article 18, which sets forth the "only" exceptions to the no-strike clause.

The dissent contends that this case is controlled by *Machinists, Oakland Lodge 284 (Morton Salt Co.)*, 190 NLRB 208 (1971), enfd. in relevant part and remanded 472 F.2d 416 (9th Cir. 1972), where the Board found that a no-strike clause did not bar sympathy strikes. However, that case is clearly distinguishable. The no-strike clause at issue contained an exception for the circumstance in which an employee honors a picket line of another union. That is, the signatory union would not be deemed in breach of contract in that circumstance. By contrast, the no-strike clause here (art. 18) contains no exception for that circumstance. As noted above, article 17 specifically refers to the right of an individual "*employee*," and states that the individual will not breach the contract, or be subject to discharge, if he honors a picket line. However, article 18 addresses the obligation of the Respondent to refrain from authorizing "any strike or work stoppages." Thus, the right afforded to an individual employee under article 17 in no way affects the prohibition on the Respondent from directing its members to engage in a sympathy strike or work stoppage in violation of article 18.[7]

The dissent also argues that a refusal to cross a third-party picket line is not a strike or work stoppage. That argument is at odds with the common definition of a "strike" or "work stoppage" and with the plain language of the parties' agreement. Article 18 prohibits the Union from authorizing "any strikes, work stoppages, or interference with the activities required of employees under this Agreement." A refusal to cross a picket line is a refusal to perform work. A refusal to perform work is the very essence of a strike or work stoppage. Thus, by threatening to fine employees who crossed the picket line, the Union authorized a strike or work stoppage in violation of article 18.

The dissent makes the further argument that article 18 is a general prohibition and article 17 is a specific permission, and the specific provision trumps the general one. Apart from the fact that each article addresses different conduct and we are bound to follow the plain meaning of language used, another governing principle of contract interpretation is that each and every provision

[7] Our colleague notes that, under art. 17, an employee's refusal to cross a picket line is not a violation of the contract. She then says that only unions can violate contracts. Therefore, she reasons, the union does not violate the contract when an employee honors a picket line. Of course, the Union is not even mentioned in art. 17, but, even assuming all of her premises, i.e., even assuming that the Union would not violate the contract if an employee chose to honor a picket line, it does not follow that a Union can authorize, much less compel, an employee to honor the picket line. That is the conduct proscribed in art. 18.

should be given operative effect if it is possible to do so. Here, by being faithful to the words the parties used, each and every provision is given operative effect. Article 17 protects *the employee* who wishes to honor the picket line, i.e., who refuses to perform work; article 18 prohibits *the Union* from authorizing employees to not to perform work. In the instant case, the Union not only authorized employees to honor the picket line, thus, stopping work, it coerced them into doing so.

The Act was intended to foster industrial peace, stability in labor management relations and the encouragement of the practice and procedure of collective bargaining. The Board fulfills these statutory goals when it interprets collective-bargaining agreements so as to give the parties the benefit of their bargain. Consistent therewith and for the reasons more fully set forth above, we find that article 18 means what it says and that the Respondent violated Section 8(b)(1)(A) by threatening to discipline, and then disciplining, its members because they refused to engage in activity that violated the collective-bargaining agreement.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Teamsters Local Union No. 688, affiliated with International Brotherhood of Teamsters, its officers, agents, and representatives, shall take the action set forth in the Order as modified below.

1. Substitute the following for paragraph 1(a).

"(a) Initiating and prosecuting intraunion disciplinary proceedings against and fining members who refuse to join a sympathy strike or honor third-party picket lines, in contravention of a contractual no-strike provision contained in the Respondent's collective-bargaining agreement with Frito-Lay, Inc., or threatening members with such fines."

2. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. September 30, 2005

Robert J. Battista, Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER LIEBMAN, dissenting.

The Union imposed fines on three of its members after they continued to deliver the Employer's goods to a customer while the employees of that customer were on strike. Under Section 8(b)(1)(A) of the Act, a union is free to discipline its members for crossing another union's picket line, so long as this does not coerce employees to engage in conduct that violates a collective-bargaining agreement. *Scofield v. NLRB*, 394 U.S. 423 (1969). Here, the plain language of the parties' contract (art. 17) permits employees to refuse to cross third-party picket lines. Thus, the Union's fines could not have coerced member-employees to violate the contract. *Machinists, Oakland Lodge 284 (Morton Salt Co.)*, 190 NLRB 208 (1971), enfd. in relevant part 472 F.2d 416 (9th Cir. 1972), judgment vacated and remanded on other grounds 414 U.S. 807 (1972).

The majority avoids this conclusion by characterizing the Union's action as a sympathy strike and by arguing, based on the contract's no-strike clause (art. 18), that the Union has waived the right to engage in such a strike. Thus, by compelling members to exercise their article 17 contract right—i.e., to engage in a sympathy strike—the Union was requiring them to *violate* the contract. But the majority acknowledges that the waiver of a statutory right must be "clear and unmistakable." *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983). That high standard cannot be met here, given article 17, which grants employees the right to do precisely what the majority insists is a violation of the contract. To the extent that the language of the collective-bargaining agreement is in tension with itself (we all agree that there is no probative extrinsic evidence of the parties' intent), the issue must be resolved in favor of the Union**,** consistent with the governing waiver standard.

I.

This case turns on the interpretation of the parties' collective-bargaining agreement. Only if the Union's discipline compelled member-employees to violate the agreement did the Union commit an unfair labor practice.

But the collective-bargaining agreement permits employees to honor third-party picket lines. Specifically, article 17 (Picket Line) of the agreement states:

> *It shall not be a violation of this Agreement* and it shall not be cause for discharge or disciplinary action in the event an employee . . . refuses to go through or work behind any lawful primary picket line, including the lawful primary picket line of any Union party to this Agreement and including lawful primary picket lines at the Employer's places of business. [Emphasis added.]

It, thus, seems self-evident that the Union's pressure on employees to honor a third-party picket line could not cause employees to violate the parties' contract.

Article 18 (Unauthorized Activity), section 4 of the Agreement, in turn, recites that:

> For the duration of this Agreement, the Union will not authorize any strikes, work stoppages, or interference with the activities required of employees under this Agreement.
>
> . . . .
>
> The only exception to this Section could be the economic action as called for in Articles 13 ["Subcontracting"] and 25 ["How Paid"].

The provision makes no specific reference to sympathy strikes, to union discipline, or to article 17**.**

II.

The language of article 17 makes clear that the Union's actions did not cause member-employees to *violate* the contract, as prohibited by Section 8(b)(1)(A). Instead, the Union effectively compelled employees to engage in conduct expressly *protected* by the contract. On the majority's view, however, union discipline transformed the exercise of a contractual right into the violation of a contractual prohibition. That view is untenable, given Board precedent, the statutory right of unions to establish rules for their members, and the "clear and unmistakable waiver" standard.

The case should be governed by *Machinists, Oakland Lodge 284*, supra. There, the Board relied on language similar to article 17, which the parties had incorporated into the no-strike clause, in concluding that the Union's fining of employees for refusing to honor a third-party picket line did not violate Section 8(b)(1)(A). The parties' collective-bargaining agreement stated:

> During the life of this Agreement, the Union will not cause a strike or production stoppage of any kind, nor will any employee or employees take part in a strike, intentionally slowdown the rate of production or in any manner cause interference with or stoppage of the Employer's work. . . . It shall not be considered a violation of this Agreement if employees of the Employer fail to report for work by reason of a legitimate, authorized picket line by another union which has a collective bargaining agreement with the Employer. . . .

190 NLRB at 209–210. The Board concluded that "since the employees were not being compelled by the fines to participate in a violation of the no-strike clause, as they were protected from such a breach by the terms of the clause, the fines merely served to induce conduct on the part of the individual employees which they could engage in with impunity under the terms of the contract as well as Section 7 of the Act." Id. at 210.[1]

The same logic should apply here. Article 17, as explained, provides that "[i]t shall not be a violation of th[e] Agreement" for an employee to refuse to cross a third-party picket line. Article 18 of the contract does prohibit the Union from authorizing "any strikes, work stoppages, or interference with the activities required of employees." But, under article 17 of the contract, crossing a third-party picket line is not an activity required of employees. Therefore, the Union's action of encouraging employees to honor a third-party picket line would seemingly not constitute "interference with the activities required of employees" under the contract.

III.

The majority tacitly concedes this point, but insists that article 18's prohibition against authorizing "strikes" and "work stoppages" was triggered. It points out that article 18 identifies the "only" exceptions to its provisions, which do not include article 17. Meanwhile**,** the majority attempts to distinguish *Machinists, Oakland Lodge 284*, supra, on the grounds that, because the parallel language in the contract at issue there (protecting the employees' right to honor third-party picket lines) was incorporated into the no–strike clause itself, it clearly constituted an exception for honoring third-party picket lines, unlike article 17 here, which precedes the no-strike clause.

The majority's position is flawed. The contract here must be viewed as a whole,[2] and so articles 17 and 18

[1] This case is distinguishable from *Teamsters Local 54 (Riverway Harbor)*, 294 NLRB 1124 (1989), which also involved contract language similar to the language at issue here. In that case, the Board found that a broad no-strike clause's prohibition covered sympathy strikes even though the contract contained an express protection of third-party picketing. In so doing, however, the Board relied on the fact that the no-strike clause expressly prohibited sympathy strikes and on extrinsic evidence suggesting that the parties had included the language as an alternative to removing the protection on third-party picketing. There is no such extrinsic evidence here and no reference to sympathy strikes in the no-strike clause.

The judge also cites the Board's decision in *Operating Engineers Local 12 (Reynolds Electrical)*, 298 NLRB 44 (1990), in which the contract language at issue more nearly approximates that here. But that case is not precedential because no exceptions were filed to the judge's finding that the parties' no-strike clause encompassed sympathy strikes and, thus, the Board did not review that finding. Id. at 44 fn. 1. In any event, that case involved extrinsic evidence not present here that established the parties' intent to prohibit concerted sympathy strikes and to protect only the individual employee's right to honor a primary picket line. Id. at 47.

[2] See *Indianapolis Power Co.*, 291 NLRB 1039, 1041 (1988) enfd. 898 F.2d 524 (7th Cir. 1990) ("[A] broad no-strike clause should properly read to encompass sympathy strikes unless the contract as a whole . . . demonstrates that the parties intended otherwise").

must be read together. To the extent that article 17 privileges the refusal to cross a third-party picket line, it is (at the very least) arguable that this particular conduct cannot properly be defined as a "strike" or "work stoppage" for purposes of article 18. "[I]t is a settled canon of contract interpretation that the specific governs over the general." *Electrical Workers Local 48 (Oregon-Columbia Chapter of NECA)*, 342 NLRB No. 10, slip op. at 3 (2004). To the extent that the contract here privileges certain specific conduct, then, it is hard to see how this conduct comes within a general prohibition.[3] Contrary to the majority's argument, the contract need not expressly denominate article 17 as an "exception" to article 18, if the conduct article 17 privileges does not fall within the prohibition of article 18 in the first place. In turn, the majority's attempted distinction of *Machinists, Oakland Lodge 284*, supra, based on the placement of article 17, necessarily fails. Article 17 may be a separate section, but the contract must be read as a whole**.**

Article 17 establishes the right of employees to honor a third-party picket line, without placing any express restrictions on that right. It does not restrict exercise of the right to individual employees acting alone, instead of together. Nor does it provide that the right may only be exercised voluntarily by individual employees, and not to avoid union discipline.[4] Such discipline is itself privileged by Section 8(b)(1)(A), which does not "impair the right of a labor organization to prescribe its own rules for the acquisition or retention of membership therein" 29 U.S.C. §158(b)(1)(A).[5] Neither article 17, nor article 18 impose any restriction on the Union's right to discipline members for failing to honor a picket line, which the Union determines should be respected.[6]

That a member of the Union exercises his article 17 right because he is compelled to do, then, does not place him in clear jeopardy of violating the contract. The majority's characterization of the Union's conduct as a sympathy strike does not change the equation. Nothing in the contract establishes that the Union clearly and unmistakably waived the right of employees to honor third-party picket lines—just the opposite. Article 17 establishes that right and provides that its exercise "shall not be a violation" of the contract. Accordingly, I would find that the Union's actions, which did no more than compel its members to exercise a contractual right that the Union had negotiated for them, were lawful, and I would dismiss the complaint.

Dated, Washington, D.C. September 30, 2005

Wilma B. Liebman, Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT initiate and prosecute intraunion disciplinary proceedings against and fine members who refuse to join a sympathy strike or honor third-party picket lines, in violation of the no-strike clause contained in our

[3] Put somewhat differently, the words in the art. 18 series "strikes, work stoppages, or interference with the activities required of employees" should be interpreted together (applying the maxim *noscitur a sociis*). Insofar as crossing a third-party picket line is not one of the "activities required of employees," neither can *refusing* to cross be considered a "strike" or "work stoppage" within the meaning of the contract.

Contrary to the majority's claim, my interpretation of the agreement does give effect to both arts. 17 and 18. It simply reads art. 17's grant of a right to engage in certain conduct as limiting the scope of art. 18's prohibition of other conduct. In short, the majority argues that the arts. 17 and 18 can only be reconciled in one way. But that view is mistaken.

[4] Indeed, had art. 17 been intended to create only an individual right, it would have been enough to provide that employees could not be discharged or disciplined for refusing to cross a picket line. Instead, art. 17 also provides that the "event" of refusing to cross is not a "violation" of the agreement. It is unions, not employees, who are liable for violations of collective-bargaining agreements.

[5] See generally *Teamsters Local 896 (Anheuser-Busch)*, 339 NLRB 769, 769 (2003) ("It is well established that nothing in the Act precludes a union from instituting its own rules for maintaining intraunion discipline and thus maintaining union solidarity, so long as those rules do not impair any policy that Congress has imbedded in the Act, and are reasonably enforced against union members who are free to resign from the Union and thus escape the rules").

[6] Compare, *Food & Commercial Workers Local 1439 (Rosauer's Supermarket)*, 275 NLRB 30 (1985) (contractual provision expressly prohibited employer or union discipline for crossing, or refusing to cross, picket line).

contract with Frito-Lay, Inc., nor will we threaten members with such fines.

WE WILL NOT in any like or related manner, restrain, or coerce you in the exercise of your rights guaranteed you by Section 7 of the Act.

WE WILL rescind any and all intraunion discipline directed against members James Griffin, Barbara Henry, and Ronald Johnson.

WE WILL remove from our files any reference to the unlawful fines and disciplinary proceedings and notify those members in writing that we have done so and that we will not use these unlawful actions against them in any way.

WE WILL reimburse James Griffin, Barbara Henry, and Ronald Johnson for any fines that they have paid, plus interest.

TEAMSTERS LOCAL UNION NO. 688, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Patrick H. Myers, Esq., for the General Counsel.
Brian A. Spector, Esq., of Kirkwood, Missouri, for the Respondent.
R. Slaton Tuggle III, Esq., of Atlanta, Georgia, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MARK D. RUBIN, Administrative Law Judge. This case was tried in St. Louis, Missouri, on October 25, 2004, based on a charge filed on October 15, 2003, by Frito-Lay, Inc. (the Charging Party or Employer) against Teamsters Local Union No. 688, affiliated with International Brotherhood of Teamsters, AFL–CIO (Respondent or the Union).

The Regional Director's second amended complaint, dated September 10, 2004, alleges that the Respondent violated Section 8(b)(1)(A) of the Act by informing members that they would be fined by Respondent if they crossed a lawful primary picket line, and by conducting trials of union members James Griffin, Barbara Henry, and Ronald Johnson, and then imposing fines on all three members, thereby restraining and coercing members who refused to engage in a sympathy strike in violation of the no-strike provision of the collective-bargaining agreement between the Respondent and the Charging Party. Respondent maintains that its alleged actions, largely undisputed, did not violate the Act because the then in-effect collective-bargaining agreement between Respondent and the Charging Party did not bar sympathy strikes.

The sole issue presented is, thus, whether the parties' collective-bargaining agreement barred sympathy strikes. If it did, Respondent concedes, essentially, that its actions against Griffin, Henry, and Johnson violated the Act. If it did not, the General Counsel and the Charging Party concede, essentially, that Respondent could fine its members for crossing lawful primary picket lines as alleged in the complaint and that such actions would not violate the Act.

At the trial, the parties were afforded a full opportunity to examine and to cross-examine witnesses, to adduce relevant and material evidence, to argue their positions orally, and to file posthearing briefs. On the entire record, including my observation of the witnesses, and after considering the briefs of the Respondent, the Charging Party, and counsel for the General Counsel, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Charging Party, a Delaware corporation, maintains an office and distribution center in Bridgeton, Missouri, and a distribution center in Fenton, Missouri, where it has been engaged in the manufacture and distribution of snack food products. During the 12-month period ending July 31, 2004, the Charging Party, in conducting its business operations, sold and shipped from its Bridgeton and Fenton, Missouri facilities goods valued in excess of $50,000 directly to points outside the State of Missouri and, further, purchased and received at its Bridgeton and Fenton, Missouri facilities goods valued in excess of $50,000 directly from points outside the State of Missouri.[1] I find, and it is admitted by Respondent, that the Charging Party is now, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

I find, and it is admitted, that Teamsters Local Union No. 688, affiliated with International Brotherhood of Teamsters, AFL–CIO (the Respondent), is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

III. UNFAIR LABOR PRACTICE

A. The Collective-Bargaining Agreement

The Union and the Employer have maintained a long-term collective-bargaining relationship, having entered into a series of collective-bargaining agreements spanning a period of more than 30 years. The bargaining unit includes the Charging Party's route sales employees at its sales distribution centers in the St. Louis area, including its centers in Fenton and Bridgeton, Missouri, and Granite City, Illinois. The relevant agreement (the agreement), in effect during the substantive events leading to the complaint, was effective from June 7, 2000, through June 7, 2003, and then extended through July 31, 2003, and then through September 30, 2003, during negotiations for a new agreement. The current agreement between the parties is effective from June 7, 2003, through June 7, 2006.

The agreement, in pertinent part, provides as follows:

> Article 17—Picket Line: It shall not be a violation of this Agreement, and it shall not be a cause for discharge or disciplinary action in the event an employee refuses to enter upon

[1] These jurisdictional facts are pleaded in the complaint, and admitted in the answer.

> any property involved in a lawful primary labor dispute, or refuses to go through or work behind any lawful primary picketing line, including lawful primary picketing at the Employer's places of business.
>
> Article 18—Unauthorized Activity, Section 4: For the duration of this Agreement, the Union will not authorize any strikes, work stoppages, or interference with the activities required of employees under this Agreement. In the event the Employer refuses to comply with a valid arbitration award pursuant to the Grievance Procedure, this provision shall be of no force or effect for so long as the refusal continues. The only exception to this Section could be the economic action as called for in Articles 13 and 25.

Neither article 13, which deals with subcontracting, nor article 25, which deals with negotiations to convert commissions from "gross" to "net" sales, are relevant to the issues here. The above quoted language from articles 17 and 18 remains the same under the current agreement, except that the language of article 25, section 4, appears at article 25, section 3. With the exception of the final sentence of article 18, section 4, which was added to the agreement for the first time in the 1987–1990 agreement, the above quoted language of article 17 and article 18, section 4 has remained unchanged since at least 1972.

B. The UFCW Strike

The substantive events here were precipitated by an economic strike which began on October 7, 2003, when grocery workers represented by United Food and Commercial Workers Local 655 (UFCW) struck grocery chain Shop 'N Save, and, in response, grocery chains Schnucks and Dierbergs locked out their UFCW represented employees. The UFCW established pickets at the stores of all three chains. The parties stipulated, and I find, that, "Respondent told its members employed by the Employer, Frito-Lay, Inc., to honor the picket lines of UFCW, Local 655 at Schnucks, Dierbergs, and Shop 'N Save stores during the October 2003[2] grocery store strike." Nevertheless, in October, three of the Charging Party's sales route employees, James Griffin, Ronald Johnson, and Barbara Henry, then all members of the Union but not of the UFCW, crossed the UFCW's lawful primary picket lines and made their scheduled deliveries.

The Employer's route sales employees such as Johnson, Henry, and Griffin, sell, deliver, and display the Employer's snack food products at various local retail outlets, including the grocery chains involved in the labor dispute with the UFCW. Their duties include unloading the product at the customer's location, "checking in" with the customer's receiving clerk, bringing the products into the store's retail sales area, displaying the products on the appropriate racks, and preparing the sales order for the next day's delivery.

On October 8, the Employer's national labor relations manager, William Brennen, human resources director, Tim Brinkmann, and zone sales leader, Kevin Meyer, met with the Union's business representative, Mel Cutrell. In response to a question, Cutrell told Meyer that if any of the Employer's employees crossed the grocery store picket lines, the Union would possibly fine them. Cutrell told Meyer that the employees could call him if they had any questions. Brennen told Cutrell that the Employer would not collect any fines. Later that evening, Meyer left a voice mail message for the Employer's route sales employees, informing them that he had spoken to Cutrell and there was a possibility that the employees could be fined if they crossed the UFCW picket lines, and that they could call Cutrell if they had any questions.

On October 8, Griffin, a member of the Union for 37 years and employed by the Employer in route sales for more than 30 years,[3] crossed UFCW picket lines to perform his normal work at a Shop 'N Save store and a Schnuck's store, both accounts he normally serviced.[4] When Griffin returned to the Employer's distribution center later that day he encountered the Union's steward, Joe Philippi.[5] In response to Phillipi's question as to what he was doing there, Griffin told Philippi that he was working and crossing the picket line. Griffin asked Philippi if he had a "beef" with that. Philippi simply left the room.

When Griffin reported to work on October 9, Philippi was already there. Phillipi asked Griffin if had checked his voice

[2] Absent further delineation, all dates reference the year 2003.

[3] About 2-1/2 weeks after the UFCW strike began Griffin resigned his membership and became a financial core member. Griffin retired from the Employer on January 3, 2004.

[4] I find, based on the stipulation of the parties, that during October, route sales employees Ronald Johnson and Barbara Henry, then members of the Union but not of the UFCW, also crossed UFCW picket lines at the grocery stores, in order to deliver product for the Employer.

[5] Respondent denied par. 4 of the second amended complaint which alleged that the nine individuals named were agents of the Respondent within the meaning of Sec. 2(13) of the Act. At trial, the Respondent stipulated that eight of the nine, excluding Steward Joseph Philippi, were, in fact, 2(13) agents of the Respondent. However, neither at trial nor in its brief does Respondent contest the 2(13) status of Philippi. Indeed, while Respondent's brief mentions Philippi, it does not argue or even take the position that Philippi is not a 2(13) agent. The evidence supports Philippi's status as an agent. Thus, during October he was Respondent's only shop steward at the Fenton facility. He provided Johnson with his dues check-off authorization forms, and after he received the completed form back from Johnson, the Employer began deducting dues from Johnson's paycheck. Philippi testified at the internal union trials to the effect that he had warned Griffin there could be repercussions if Griffin crossed the UFCW picket line. Finally, as noted by counsel for the General Counsel in his brief, the 2000–2003 collective-bargaining agreement provided, "Stewards and alternates have no authority to take strike action, or any other action interrupting the Employer's business, except as authorized by official action of the Local Union." At no time did Respondent disavow Philippi's actions described in the decision including his warnings as to crossing the UFCW's picket lines. Here, Philippi was acting within the scope of his general authority as the only representative of the Union with whom employees had daily contact at the work place. His warnings to employees as to crossing the UFCW picket line were not only not disavowed, but were supported by Respondent as indicated by the trial results, and by the trial transcript which quotes Respondent's secretary-treasurer as reminding Griffin, "The steward told you, you could be fined . . . ." Under these circumstances, with Respondent not contending to the contrary, I find that Philippi was an agent of Respondent within the meaning of Sec. 2(13). See *Plumbers Local 250 (Murphy Bros.)*, 311 NLRB 491 (1993), and *Yellow Freight Systems*, 307 NLRB 1024 (1992).

mail. Griffin listened to his voice mail, which contained the above-described message from Meyer. Philippi asked Griffin what he thought of the message, and Griffin responded, "Go ahead and fine me." After leaving the room for about 5 minutes, Philippi returned, approached to within about 3 feet to Griffin, leaned forward into his face, and told him that he could be fined up to $200 per day if he crossed the UFCW picket line.[6]

Also on October 9, Philippi, at the Employer's Fenton facility, spoke to collective-bargaining unit route sales employees Jeff Austermann, Chip Unckrant, and Curt Bourne, telling them, "I wonder what the dude is thinking. The Union is going to fine him $200.00 a day. How much money could he possibly [be making] in the stores? There is no business out there." The "dude" Philippi was referring to was Griffin.[7]

Later on October 9, Employer Zone Sales Manager Meyer, who learned from Griffin and Koester that Philippi was talking to route sales employees about $200 fines for crossing the UFCW picket line, called Union Business Representative Cutrell. Meyer asked Cutrell about the $200 figure. Cutrell told Meyer that the fines would be based on a formula determined by the Union's executive board rather than a set $200 amount. That evening, Meyer left a voice mail message for his route sales employees stating that the $200-per-day fine figure was incorrect, and that the amount of any fine would be determined based on a formula set by the Union's executive board. On October 10, Cutrell called Meyer, apparently upset at what he thought was contained in the voice mail message Meyer had left for the route sales employees. Meyer told Cutrell that he had merely passed on to the employees what Cutrell had previously told Meyer as to the fines; that is, that the fine amounts would be determined by the Union's executive board. At some point in mid-October, Cutrell had a phone conversation with unit route sales employee Ronald Johnson, and told Johnson that there was a possibility of fines if the picket line was crossed.[8]

On October 23, the Employer sent a letter, signed by Meyer and Brinkmann, to route sales employees who delivered to one of the markets affected by the UFCW labor dispute, and who were affected by the dispute. The letter invites employees to return to work "if you would like to," states that the strike involves the UFCW, not the Teamsters, reminds employees that the Union said it would fine members who cross the UFCW picket line, and adds that, "Under the language of the contract, we do not believe Frito-Lay is obligated to hold these fines from your pay."

The letter, additionally, addresses the subject of union fines as follows:

> During the last two weeks, a number of employees have asked if there is a way to cross pickets at grocery markets without getting fined or punished by the Union. The following is an outline of the procedures you may consider if you are contemplating this question: Union members may be subject to fines or other discipline under a union constitution or by-laws for certain conduct such as crossing a picket line. As a general rule, union members are free to resign their membership at any time. A union cannot fine an employee for conduct occurring after resigning. If an employee is covered by a contract requiring union membership, the individual can resign from full membership and still comply with the contract by becoming a 'financial core member.' As a financial core member, the employee must pay the uniform dues or fees charged by the union, but he or she is not subject to union fines.

The letter included a form to be utilized to convert to financial core membership status, which contained the following language:

> The decision whether to resign or to reduce membership status is up to the individual. We are providing this information simply because employees have asked if there is a way to work and cross picket lines without fear of union fines. No employee will be discriminated against in any way because of his or her decision whether or not to resign or reduce membership status.

C. Union Internal Charges and Trial

On October 24, the Union's steward, Philippi, filed internal union charges against Griffin, Henry, and Johnson, alleging that they had crossed an authorized picket line.[9] On November 25, Union President Mike Goebel scheduled trials for January 21, 2004. The Union, in fact, conducted the trials as scheduled and, on August 31, 2004, the Union, by its executive board, found Griffin, Johnson, and Henry guilty of the charges, and imposed fines of $1000 each.

D. Other Extrinsic Evidence Impacting Contractual "No-Strike" Clause

1. Past practice

There was little evidence of past practice involving third-party picket lines. Griffin testified that during his history of employment with the Employer prior to the grocery strike, he had never been confronted with a picket line at a customer's location. John Wegener,[10] a route sales employee for the Employer for 28 years, and called as a witness by the Respondent, testified as to encountering picket lines at two "Food For Less"

[6] Griffin testified that no representative of the Union ever subsequently informed Griffin that Phillipi's threat was unauthorized. I credit Griffin, whose testimonial demeanor and memory demonstrated credibility.

[7] This finding is based on the credited, undisputed testimony of Keith Koester, the Employer's district sales manager. Koester testified that he was in the office next to where Philippi was talking to the employees, with his door open, and could clearly hear the conversation. I credit Koester, whose testimonial demeanor and memory demonstrated credibility.

[8] Johnson credibly testified to this conversation. Cutrell did not deny Johnson's version. Johnson's testimonial demeanor and memory demonstrated credibility.

[9] An internal charge, not involved in this case, was also filed against member Mark Lewis.

[10] I fully credit Wegener, whose testimony was undisputed. His testimonial demeanor and memory demonstrated credibility.

stores in 2001[11] that were part of his regular route. Wegener was instructed by the Union not to cross the picket lines, and he did not. Wegener testified that at the time there were about 150 route sales employees in the bargaining unit, that there were a total of 6 Food For Less Stores in the metropolitan St. Louis area, that his route included two such stores, and that "no more than a couple" of other bargaining unit route sales employees would have had routes including Food For Less stores.

Wegener testified that his arrangement to service the stores was as follows: Wegener's supervisor at the Fenton location at the time was Charlie Hoffman. Hoffman would visit the store and obtain the order. When Wegener returned to Fenton after servicing his route, he would prepare the Food For Less order for delivery the next day. The next day Hoffman would deliver the order and obtain the new order. Wegener received his full commission for the Food For Less deliveries, and this procedure continued during the indeterminate duration of the picketing. Hoffman never instructed Wegener to cross the picket line. Wegener further testified that Food for Less stores were not unionized, and that Wegener had no idea what caused the picketing, but that it was not an economic strike involving Food For Less employees.

Wegener also testified as to a second picketing incident about 15 years ago. Roving pickets from "beer companies" which were on strike would appear at retail outlets only while a beer delivery truck was present delivering beer. If pickets were present, Wegener would simply resequence his deliveries, and come back a few minutes later when the pickets had left. Wegener testified that he never crossed the "beer" picket lines, and was never instructed by a supervisor to cross the picket lines. No evidence was produced as to whether the Employer was aware of the "beer" picketing.

2. Contract negotiations

No evidence was introduced as to the original bargaining leading to the relevant contractual provisions, what is now article 17 (Picket Line) and article 18 (Unauthorized Activity), section 4, which have remained essentially unchanged since at least 1972. Further, other than as described below, no evidence was introduced as to relevant bargaining proposals in any subsequent set of contract negotiations.

Business Representative Cutrell[12] testified that during the negotiations leading to the current collective-bargaining agreement, Cutrell told William Brennen, the Employer's chief negotiator, that Cutrell had talked "to another person, from one of the other cities and that they had put the protection of rights picket line language on the table, to delete it from the contract."[13] Cutrell told Brennen that "if he put the same language on the table that he had put on the table at Local 344, Milwaukee, that we were going to have a major problem." Cutrell testified that Brennen told him that the reason he had proposed the language during the Milwaukee negotiations was because of "what had happened here in the St. Louis market with the St. Louis grocery strike." Nevertheless, the Employer never proposed to delete article 17 during the St. Louis negotiations, and the parties neither proposed nor agreed to any changes to the picket line and no-strike language as it appears in article 17 and article 18, section 4 of the current agreement. Thus, there is no evidence that either side has attempted to materially alter either relevant section since they first appeared in the contract of this bargaining unit.

Analysis and Conclusions

Counsels for the General Counsel and the Charging Party both maintain that the contractual no-strike clause should be read as precluding sympathy strikes, and that, therefore, the Respondent's imposition of fines upon members in retaliation for crossing the UFCW's picket lines, and the threats to impose such fines, violate Section 8(b)(1)(A). Respondent argues that the extrinsic evidence demonstrates that the parties intended the no-strike provision to be narrowly construed so as not to include sympathy strikes, and that, therefore, the Respondent was free to engage in its actions of threatening to fine, and fining members who crossed UFCW picket lines.

Section 8(b)(1)(A) of the Act makes it an unfair labor practice for a union "to restrain or coerce . . . employees in the exercise of the rights guaranteed in Section 7 of the Act." The proviso to Section 8(b)(1)(A) provides that the section "shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." Further, Section 8(b)(1)(A) leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and reasonably enforced against union members who are free to leave the union and escape the rules. *Scofield v. NLRB*, 394 U.S. 423, 430 (1969).

This entitlement of a union, however, is not unfettered. For example, in *Mine Workers Local 1249 (National Grinding)*, 176 NLRB 628, 632 (1969), the Board found an 8(b)1)(A) violation where a union fined members who crossed a stranger picket line, in circumstances where the union was party to a collective-bargaining agreement containing a broad no-strike clause. The Board reasoned that to permit the union to penalize members who refused to violate a no-strike provision would provide an incentive to unions to violate such collective-bargaining agreements. In some subsequent decisions, however, the Board refused to construe broad no-strike provisions to necessarily preclude sympathy strikes. See, for example, *Operating Engineers Local 18 (Davis-McKee)*, 238 NLRB 652 (1978).

In *Indianapolis Power Co.*, 291 NLRB 1039 (1988), enf. 898 F.2d 524 (7th Cir. 1990), the Board delineated how no-strike contractual clauses should be analyzed in terms of sympathy strikes. "To summarize, we continue to believe that a broad no-strike clause should properly be read to encompass sympathy strikes unless the contract as a whole or extrinsic evidence

[11] There is no definitive evidence in the record as to over what period of time the Food For Less picket lines remained ongoing. Wegener was asked how long the picket lines were up, and responded, "I would say, three months, four months. I am just guessing."

[12] I credit Cutrell's unchallenged testimony as both his testimonial demeanor and memory demonstrated credibility.

[13] In October 2003, during contract negotiations between a union and the Employer for a separate bargaining unit in Milwaukee, Wisconsin, the Employer had proposed deleting a provision similar to the picket rights language contained in art. 17 of the agreement here.

demonstrates that the parties intended otherwise. In deciding the issue whether sympathy strikes fall within a no-strike provision's scope, the parties' actual intent is to be given controlling weight and extrinsic evidence should be considered as an integral part of the analysis." The Board further held that when parties agree to a broad no-strike provision which bars "any strike," such language can be found, absent contrary evidence, "to have clearly and unmistakably intended to bar sympathy strikes." Supra at fn. 17.

Applying this analysis of the Board to the facts, I, first, conclude that the language of article 18, section 4 of the collective-bargaining agreement is a broad no-strike clause. The clause covers "any strikes, work stoppages, or interference with the activities required of employees under this Agreement." As the Board held in *Indianapolis Power*, supra, such language, absent contrary evidence, can reasonably be found to have intended to bar sympathy strikes which logically come within the category of "any strikes." Accordingly, unless the extrinsic evidence demonstrates to the contrary, I conclude that the intent of article 18, section 4 was to bar sympathy strikes.[14]

I also conclude that the language of article 17, which permits individual employees to honor lawful primary stranger picket lines without fear of discipline or discharge, when read with article 18, section 4, does not demonstrate a different intent. Article 17 allows an employee the personal decision as to whether or not to cross a stranger picket line. See, for example, *Operating Engineers Local 12 (Reynolds Electrical)*, 298 NLRB 44 (1990). Article 18, section 4 bars the Respondent from strikes or other interference with the activities required of employees. Allowing the Respondent to fine members for crossing stranger picket lines would eliminate the voluntary intent of article 17, and render meaningless the intent of article 18, section 4, a result inconsistent with the clear language of the contract. *Operating Engineers Local 12 (Reynolds Electrical)*, supra.

I further conclude that the extrinsic evidence is insufficient to demonstrate that the intent of the parties was not to include sympathy strikes in the contractual no-strike provision. Respondent presented minimal and marginal evidence of past practice. The testimony of a lone employee that on one occasion he had an arrangement with his supervisor as to the servicing of one account during picketing does not demonstrate the intent of the parties, particularly where the evidence does not indicate that the picketing involved a union, a strike, economic action, or anything else that could arguably be called a sympathy strike. The further testimony of this witness to the effect that about 15 years ago he rearranged his servicing schedule so as to not have to cross a roving picket line, sheds no additional light on the intent of the parties, particularly where, as here, there is no evidence that the Employer was even aware of the picketing.[15]

Similarly, I do not find convincing Respondent's argument that the Employer's apparent proposal in bargaining at Milwaukee, a different bargaining unit at a different location, sheds light on the intent of the parties as to the no-strike provision here. The apparent intent of the Milwaukee proposal, that language similar to that in article 17 (protecting an employee's right to voluntarily refuse to cross a picket line) be deleted from the agreement, would be to impact on a single employee's voluntary right not to cross a picket line, but would have no effect on the no-strike provision. Even more significantly, no such proposal was ever made in respect to bargaining between the parties as to the bargaining unit here. I cannot conclude that a proposal made in bargaining as to a different unit and different location assists in determining the intent of the parties as to the instant contract particularly where, as here, the proposal has little, if any, impact on the contractual provision at issue, the no-strike clause.

Respondent, finally, maintains that the Employer's actions subsequent to the inception of the UFCW picket lines, including the two voice mail messages left by Meyer for employees and Respondent's letter to employees of October 23, provide extrinsic evidence demonstrating that the Employer viewed the no-strike language as not applying to sympathy strikes. Respondent points out that in his two voice mail messages, Meyer warned employees they could be fined if they crossed UFCW picket lines, and in the letter the Respondent gives advice to its employees as to a method of avoiding fines, financial core membership in the Union. Respondent argues that if Respondent believed the contractual no-strike provision covered sympathy strikes, it is illogical that it would have sent the voice mail messages and letter warning of possible fines and methods of avoidance. I do not agree.

In my view, neither the voice mail messages nor the letter provides persuasive evidence of the Employer's view of the intent of the no-strike language. The messages and letters simply reflect the Employer's view of the reality of what Business Representative Cutrell told Zone Sales Leader Meyer on October 8 and 9; that is, that the Respondent intended to fine members who crossed UFCW picket lines. While it is true that none of the three communications to employees carried the Employer's view that the no-strike clause covered sympathy strikes, in my view the communications were not intended to provide employees with a full discourse of the legal niceties of the situation, but to simply and pragmatically warn employees of what the Union had conveyed to the Employer, and what steps they could take to avoid such fines.

In sum, I find that the extrinsic evidence falls short of demonstrating that the parties intended the no-strike provision to mean something other than its clear language of covering ". . .

[14] While there is no evidence as to the negotiations that led to the original placement of the no-strike provision in the collective-bargaining agreement, the Charging Party correctly argues in its brief that Board law at the time gave literal meaning to a broad contractual no-strike provision. See, for example, *Mine Workers Local 12419 (National Grinding Wheel Co.)*, 176 NLRB 628 (1969).

[15] See the discussion at *Indianapolis Power*, supra at fn. 18: "We hesitate to draw any firm conclusions from this evidence. The Respondent's failure consistently to require employees to cross third-party picket lines may have been due simply to a desire to avoid unnecessary confrontations with its employees and their bargaining representative in instances where immediate completion of a work assignment was not considered vital."

any strikes, work stoppages, or interference with the activities required of employees under this agreement." Indeed, the best evidence of intent here are the clear actions of both parties: the Respondent fined its members for crossing stranger picket lines because it did not believe the no-strike language was intended to cover sympathy strikes, and the Employer filed an unfair labor practice charge against the Respondent because it believed the no-strike provision covered all strikes, including sympathy strikes.

Applying the Board's standard for analysis set forth in *Indianapolis Power*, supra at 1041, that "a broad no-strike clause should properly be read to encompass sympathy strikes unless the contract as a whole or extrinsic evidence demonstrates that the parties intended otherwise," I conclude that neither the extrinsic evidence nor the contract read as a whole demonstrate that the broad no-strike contractual language was intended by the parties not to apply to sympathy strikes. Accordingly, I conclude that the Respondent's actions in warning and then fining members for crossing stranger picket lines, despite the presence of a contractual no-strike provision prohibiting sympathy strikes, violated Section 8(b)(1)(A).

CONCLUSIONS OF LAW

1. The Charging Party is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. Joseph Phillipi holds the position of steward and is agent of the Respondent within the meaning of Section 2(13) of the Act.

4. Respondent violated Section 8(b)(1)(A) of the Act by fining members/employees James Griffin, Barbara Henry, and Ronald Johnson because they crossed a third-party picket line, and by warning other members/employees that they would be fined if they crossed a third-party picket line, at a time when the collective-bargaining agreement between the Respondent and the Charging Party, covering said members/employees, prohibited Respondent from engaging in sympathy strikes.

5. The unfair labor practices committed by Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has violated Section 8(b)(1)(A) of the Act, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent fined employees, I recommend that it be ordered to vacate those fines. The record does not indicate whether any of the fines have been paid. I shall recommend that Respondent be ordered to return to any employee who has paid a fine the amount of the fine plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

It is further recommended that the Respondent remove from its records all references to the discipline found unlawful and to notify James Griffin, Barbara Henry, and Ronald Johnson that this has been done.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended[16]

ORDER

The Respondent, Teamsters Local Union No. 688, affiliated with International Brotherhood of Teamsters, AFL–CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Initiating and prosecuting intraunion disciplinary proceedings against and fining members who refuse to join a sympathy strike or honor third-party picket lines, in contravention of a contractual no-strike provision contained in the Respondent's collective-bargaining agreement with Frito-Lay, Inc, or threaten members with such fines.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind, within 14 days of this Order, any and all intraunion discipline, including fines, directed against members James Griffin, Barbara Henry, and Ronald Johnson.

(b) Remove from its files, within 14 days from the date of this Order, any reference to the unlawful fines and disciplinary proceedings, and notify those members in writing that it has done so and that it will not use these unlawful actions against them in any way.

(c) Reimburse James Griffin, Barbara Henry, and Ronald Johnson for any fines they have paid, plus interest, in the manner set forth in the remedy.

(d) Within 14 days after service by the Region, post at all places where notices to members are posted copies of the attached notice marked "Appendix."[17] Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Further signed copies of the notice will be provided to the Board for submission to the Employer for posting at appropriate places, if the Employer is willing. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

Dated, Washington, D.C. January 14, 2005

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[16] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the Board shall, as provided in Sec. 102.48 of the Rules, adopt the findings, conclusions, and recommended Order, and all objections to them shall be deemed waived for all purposes.

[17] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

WE WILL NOT initiate and prosecute intraunion disciplinary proceedings against, and or fine members, who refuse to join a sympathy strike, or who cross a third-party picket line, in violation of the no-strike clause contained in our contract with Frito-Lay, Inc.

WE WILL NOT threaten to fine members who cross a lawful primary picket line or who refuse to join a sympathy strike, in violation of the no-strike clause contained in our contract with Frito-Lay, Inc.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL rescind any and all intraunion discipline directed against members James Griffin, Barbara Henry, and Ronald Johnson.

WE WILL remove from our files any reference to the unlawful fines and disciplinary proceedings and notify those members in writing that we have done so and that we will not use these unlawful actions against them in any way.

WE WILL reimburse James Griffin, Barbara Henry, and Ronald Johnson for any fines that they have paid, plus interest.

TEAMSTERS LOCAL UNION NO. 688, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL–CIO